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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,  
14  
15 v.  
16  
17 DAMION JAY PHILLIPS,  
18  
19 Defendant.  
20

CASE NO. 2:20-CR-00207-JAM

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: December 15, 2020  
TIME: 9:30 a.m.  
COURT: Hon. John A. Mendez

21 This case is set for a status conference on December 15, 2020. On May 13, 2020, this Court  
22 issued General Order 618, which suspends all jury trials in the Eastern District of California “until  
23 further notice,” and allows district judges to exercise their discretion to continue all criminal matters on  
24 a case-by-case basis. This and previous General Orders were entered to address public health concerns  
25 related to COVID-19.

26 Although the General Orders address the district-wide health concern, the Supreme Court has  
27 emphasized that the Speedy Trial Act’s ends-of-justice provision “counteract[s] substantive  
28 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
*Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
3 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
4 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
5 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
6 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
7 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
8 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
9 and the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767–68; *see also United*  
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.  
19 In light of the societal context created by the foregoing, this Court should consider the following case-  
20 specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice  
21 exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date for the  
22 status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial  
23 continuance must be “specifically limited in time”).

## 24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
26 through defendant’s counsel of record, hereby stipulate as follows:

27 \_\_\_\_\_  
28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
Cal. March 18, 2020).

1. By previous order, this matter was set for status on December 15, 2020.

2. By this stipulation, defendant now moves to continue the status conference until January 26, 2021, and to exclude time between December 15, 2020, and January 26, 2021, under Local Code T4.

3. By this stipulation, the parties also request that the Court adopt the below briefing schedule:

a) The defendant shall file any motion to suppress by January 26, 2021;

b) The United States shall file any opposition by February 9, 2021; and

c) The defendant shall file any reply by February 16, 2021.

4. The parties further agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports and related documents, criminal history documents, and other paper documents, along with several photographs and video files provided by the California Highway Patrol. All of this discovery has been, or soon will be, either produced directly to counsel and/or made available for inspection and copying.

b) In light of this discovery, counsel for defendant desires additional time to consult with his client, to review the current charges, to conduct investigation and research related to those charges, to review and copy discovery for this matter, to inspect physical evidence seized and/or otherwise available concerning this matter, to discuss potential resolutions with his client, to consider and/or prepare pretrial motions, and to otherwise prepare for trial.

c) Moreover, in addition to the general public-health concerns cited by General Order Nos. 611 and 612 issued by this Court on March 17 and 18, 2020, and presented by the evolving COVID-19 pandemic, which the parties incorporate herein, an ends-of-justice delay is particularly apt in this case because counsel have been encouraged to telework and minimize personal contact to the greatest extent possible, and—consistent with that public-health guidance—it will be difficult for defense counsel to fully investigate the facts of this case in advance of the currently scheduled hearing.

d) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into

account the exercise of due diligence.

e) The government does not object to the continuance.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of December 15, 2020 to January 26, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

5. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: December 8, 2020

McGREGOR W. SCOTT  
United States Attorney

/s/ AARON D. PENNEKAMP  
AARON D. PENNEKAMP  
Assistant United States Attorney

Dated: December 8, 2020

/s/ DOUG BEEVERS  
DOUG BEEVERS  
Counsel for Defendant  
DAMION JAY PHILLIPS

**FINDINGS AND ORDER**

IT IS SO FOUND AND ORDERED this 8<sup>th</sup> day of December 2020.

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ  
UNITED STATES DISTRICT COURT JUDGE